

In The United States Patent Office

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In re Application of Juan Luis HANCKE
et al., *Diterpenic Lambdanes...*

Art Unit 1625
Serial No. 10/516,500
Filed 3 February 2004

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REPLY BRIEF

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INTRODUCTION

This REPLY BRIEF is submitted in response to the EXAMINER'S ANSWER. This REPLY BRIEF is filed within two months of the EXAMINER'S ANSWER. No extension of time fee is therefore believed due.

5 This patent application has been granted Special status. Expedited resolution of this appeal is therefore respectfully requested.

The Examiner Relies On Evidence Which Is Not Of Record In This Case

10 The EXAMINER'S ANSWER relies on art which is not of record in this case. The Examiner relies on Samaha *et al.* (see EXAMINER'S ANSWER at page 10, 12), on Vasantha *et al.* (*id.* at page 10, 11), and on "NIH website" (*id.* at 12).

15 Reliance on this evidence is improper because these references are not of record in this case. To the contrary, the Examiner has never cited these references on a Notice of References Cited. Further, the Examiner has not provided copies of these references to the Applicant nor to the Board, nor entered them into the PAIR system. The Board cannot rely on these references because they are not of record in this case.

The Newly-Submitted Evidence Fails
to Comply with Rule 41.33(d)(1)

The Examiner could have introduced this new evidence into the record pursuant to Rule 41.33. The Examiner, however, has failed to comply with Rule 41.33. Rule 41.33 permits the entry of new evidence after the filing of a Notice of Appeal if - but only if - two requirements are met.

First, the Examiner must determine that that new evidence overcomes all rejections under appeal. *See* 37 C.F.R. § 41.33(d)(1). Second, there must be a showing of good and sufficient reasons why the evidence is necessary and was not earlier presented. *Id.*

In the instant case, the Examiner has failed to comply with either requirement. Until the Examiner does so, the Office cannot enter the new evidence.

Applicant respectfully requests the Board reverse all pending rejections and order the Examiner to issue a NOTICE OF ALLOWANCE.

Respectfully submitted on behalf of the Applicant by its attorneys,
PHARMACEUTICAL PATENT ATTORNEYS, LLC

/s/

Mark Pohl, Reg. No. 35,325

Pharmaceutical Patent Attorneys LLC
55 Madison Avenue, 4th floor
Morristown, NJ 07960-6397 USA
4 September 2007

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